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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/869,582 | 02/28/2002 | Martin F. Yanofsky | 19425A-002210US | 4739 |
| 20350 | 7590 | 05/06/2004 | EXAMINER | |
| TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834 | | | | BAUM, STUART F |
| | | ART UNIT | | PAPER NUMBER |
| | | 1638 | | |

DATE MAILED: 05/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 09/869,582 | YANOFSKY, MARTIN F. | |
| | Examiner | Art Unit | |
| | Stuart F. Baum | 1638 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 28 February 2002.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) _____ is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) 1-33 are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Election/Restrictions

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-4, 8-15, 19-26, and 30-33, drawn to an isolated nucleic acid molecule, a method of producing a transgenic plant characterized by suppressed flowering, transgenic plant with suppressed flowering, and a kit, all of which comprising an AGL2 regulatory element of SEQ ID NO:1 operably linked to a nucleotide sequence encoding a cytotoxic product.

Group II, claim(s) 1-3, 5, 8-14, 16, 19-25, 27 and 30-33, drawn to an isolated nucleic acid molecule, a method of producing a transgenic plant characterized by suppressed flowering, transgenic plant with suppressed flowering, and a kit, all of which comprising an AGL4 regulatory element of SEQ ID NO:2 operably linked to a nucleotide sequence encoding a cytotoxic product.

Group III, claim(s) 1-3, 6, 8-14, 17, 19-25, 28 and 30-33, drawn to an isolated nucleic acid molecule, a method of producing a transgenic plant characterized by suppressed flowering, transgenic plant with suppressed flowering, and a kit, all of which comprising an AGL9 regulatory element of SEQ ID NO:3 operably linked to a nucleotide sequence encoding a cytotoxic product.

Group IV, claim(s) 1-3, 7, 8-14, 18, 19-25, 29 and 30-33, drawn to an isolated nucleic acid molecule, a method of producing a transgenic plant characterized by suppressed flowering, transgenic plant with suppressed flowering, and a kit, all of which comprising an AP1 regulatory element of SEQ ID NO:10 operably linked to a nucleotide sequence encoding a cytotoxic product.

2. Inventions I-IV are unrelated to each other because nucleotide sequences either encoding different proteins or specifying specific expression patterns are structurally distinct chemical

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compounds and are unrelated to one another, as are different proteins structurally distinct chemical compounds and unrelated to one another. These sequences are thus deemed to normally constitute **independent and distinct** inventions within the meaning of 35 U.S.C. 121.

Absent evidence to the contrary, each such sequence is presumed to represent an independent and distinct invention, subject to a restriction requirement pursuant to 35 U.S.C. 121 and 37 CFR 1.141 et seq (see MPEP 803.04 and 2434). This requirement is not to be construed as a requirement for an election of species, since each nucleotide sequence is not a member of a single genus of invention, but constitutes an independent and patentably distinct invention.

3. In addition, the claims are not linked by a single technical feature because they are each drawn to products and processes not shared by the other. The products and methods comprising SEQ ID NO:1 of Group I are not shared by the products and methods comprising SEQ ID NO:2 of Group II, which are not shared by the products and methods comprising SEQ ID NO:3 of Group III, or which are not shared by the products and methods comprising SEQ ID NO:10 of Group IV.

4. Because these inventions are distinct for the reasons given above, have acquired a separate status in the art as shown by their different classification, and the literature and sequence searches required for each of the Groups are not required for another of the Groups, restriction for examination purposes as indicated is proper.

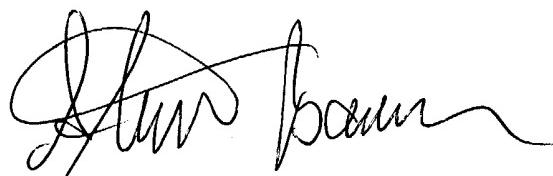
5. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

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6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stuart F. Baum whose telephone number is 571-272-0792. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amy Nelson can be reached on 571-272-0804. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-1600.



Stuart F. Baum Ph.D.
Patent Examiner
Art Unit 1638
March 19, 2004